direct; and every such administration may be limited as the Court shall think fit.

The case of *In the Goods of Samson*[1] is important. In that case the following passage appears at pages 49 and 50 of the judgment :—

> The seventy-third section does not give me power to refuse probate to any executor appointed by a testator by reason of the badness of his character, but only in certain cases, namely, to such persons as shall be at the time of the testator's death out of the United Kingdom, and therefore beyond the jurisdiction of this Court; and there must be superadded a necessity or convenience that such person should not be allowed to act. The necessity or convenience is further defined as that arising from the insolvency of the estate or other special circumstances. This provision gives me power, where the executor is resident out of the country, if I think he is, by reason of his position there or his bad character, unfitted to act, to exercise a discretion and refuse him an appointment. But it is plain that I must not, merely because the executor is out of the country at the time of the testator's death, lightly set him aside on the ground that some accusation has been brought against him, although in some cases I may do so.

In the case before me there are no reasons why the executors should be set aside; they are both sons of the deceased and there is nothing to suggest they are unfit to be granted probate. Therefore this is not a case which, under section 54 of the Probate and Administration Enactment, I think it is necessary to appoint some other person to administer the deceased's estate. There appears to be no ground that it will be inconvenient if they are appointed.

The only other provisions of the Probate and Administration Enactment (Cap. 8) to which I need refer are sections 41 and 79.

The former section reads :—

> When any executor is absent from the Federated Malay States and there is no executor within the Federated Malay States willing to act, letters of administration with the will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration to himself.

In my view that is merely an enabling provision; it does not provide that where an executor is absent from the country, administration of the deceased's estate can be granted only to an attorney of the absent executor.

By section 79 the Court may direct, even in granting probate, that the person to whom the grant is made shall give an administration bond. If the Court so directs in any case in which it grants probate to an executor out of the country, that executor would have to come into the country to execute the bond before he could extract his grant of probate. But the Court would only so direct if there are special circumstances — e.g. where the interests of minors have to be protected. In this case there are no special circumstances.

I conclude that the two petitioners, though out of the jurisdiction, are entitled to be granted probate, and accordingly I so order.

Probate Granted.

SARA BINTI HAJI MAT HASSAN v. MARIAM BINTI SAAID.

[Orig. Civ. Juris. (Callow, J.) October 6, 1949]

[Alor Star — Originating Motion No. 29 of 1949]

Land Enactment No. 56, Ss. 85, 85(5), 85(6), 186(5) — Appeal — Extension of time — What are special circumstances for.

This was a motion to extend the time under S. 186(5) of the Land Enactment within which to appeal against an Order of the Settlement Officer, Padang Terap. The facts of the case appear sufficiently in the Judgment below.

Held, that the cause shown for the delay does not constitute special circumstances to render an extension just.

Cases referred to :—

(1) *Jacobson v. Lee*, Weekly Notes dated July 22, 1949, pp. 318, 319.

(2) *Manickam v. Tremelbye (Selangor) Rubber Co., Ltd.* (1949) M.L.J. 90.

(3) *Re Helsby* (1894) 1 Q.B. at p. 746.

ORIGINATING MOTION.

Ismail Khan for the Opposer/Applicant.

Claimant in person.

Cur Adv. Vult.

Callow, J. : — This is a motion to extend the time within which to appeal against an order of the Settlement Officer, Padang Terap, made on the 18th of January, 1949.

The Order was made in accordance with proceedings under section 85 of Enactment No. 56 (Lands), hereafter called the Enactment, and the applicant was the Opposer. By section 85(6) of the Enactment, appeal lies within thirty days; this sub-section has to be considered with section 186 of the Enactment which if certain procedure is followed appears to enlarge the time, for it permits an aggrieved party to seek within thirty days of a decision a certificate of the grounds therefor, and then a further thirty days is granted within which petition may be lodged setting out the grounds of dissatisfaction.

In this case there is no record of any application for grounds of decision, and perhaps none was necessary, for the Settlement Officer concluded a very searching and thorough inquiry by recording what he described as his finding, consequent upon which he made his order. This order by section 85(5) of the Enactment should be in the form of Schedule XII, but this was not exactly followed; however there is no ambiguity and the departure from the approved form does not appear to be fatal.

Thus the appeal period expired thirty days later, that is to say on the 17th of February, 1949. By Exhibit "A" there is evidence that the applicant first gave notice of appeal on the 10th of February, 1949, which was within time, but the necessary fees were not paid and therefore the appeal was not filed and remains unfiled.

On the 22nd of February, 1949, the applicant was informed that the appeal period had expired and that she should seek extension of time if she wished to pursue it.

Requirements of translation caused delay until a few days after the 4th of April, 1949, the exact date is not given.

Then on the 14th of April, 1949, the applicant consulted counsel, but no Advocate fees were forthcoming. In her affidavit the applicant attributed further delay to ignorance of procedure and misunderstanding of the payment of fees, but the truth is that the subsequent delay was on account of non-satisfaction of Advocate's fees. At all events the proceedings were not in Counsel's hands until 15th of August, 1949, and application for translation was not made until the 24th of August, 1949.

Now does this history amount to special circumstances such as to render extension of time just (section 186(5) of the Enactment)? The latest possible date following section 186 of the Enactment, within which appeal lay was the 19th of March, 1949, that is to say, had procedure been to obtain grounds of decision; as I have observed the grounds in this case were described as a finding and given on the 18th of January, 1949, together with the order, so here the appeal period expired on the 17th of February, 1949. The applicant's motion was filed on the 6th of September, 1949, or approaching seven months after the expiration of the appeal period.

I have had reference to the reported case of *Jacobson v. Lee*[1]. In the judgment of Harman J. is stated :—

> It was important that litigants should not be shut out from their rights, but it was equally important that a litigant who had a judgment in his favour should not have it taken away from him except in very special circumstances. It was in the interest of the public that there should be an end of litigation. In Dunn v. Beausire (unreported, see note in Annual Practice (1948) page 1249) the Court of Appeal held that mere mistake and hardship were insufficient to justify an application. The question was whether there was here anything more than mere mistake and hardship.

I have also been guided by the case of *Manickam v. Tremelbye (Selangor) Rubber Co., Ltd.*[2], in which special circumstances sufficient to render an extension just were considered, and I was much impressed by the citation therein from *Re Helsby*[3] :—

> Upon the question whether the time ought to be extended, speaking for myself, I am inclined to adopt the view of the late James L.J., that a party has a vested right in an order of the Court in his favour, and ought not to be deprived of an advantage given to him by the rules, 'unless there has been on his part some conduct raising an equity against him,' or in case of 'inevitable accident'.

I think it must be emphasised that there must be finality to litigation. The Court has discretion and the question is whether on the facts of this particular case it should be exercised. In the Annual Practice 1948 at page 1347/8 many cases and examples are cited, and the principle appears to be that discretion may be exercised if some equity can be shewn arising from accident or mistake.

Up till the 14th of April, 1949, there might be much to assist the applicant, but from that date onwards for several months she was responsible for the non-furtherance of the application because of omission to fully instruct Counsel.

I cannot hold that such delay constitutes special circumstances. I do not think a party can successfully urge extension of time within which to appeal on the grounds of failure to fully instruct Counsel. The other side on the expiration of the appeal period naturally concludes finality, and it does not seem just to revive the matter on appeal because it took from April to August for the applicant to brief Counsel.

The application to appeal out of time is dismissed with costs in favour of the respondent.

Application Dismissed.

MANASSEH v. THE ATTORNEY-GENERAL AND MUSTAPHA BIN AHMAD .... THIRD PARTY.

[Orig. Civ. Juris. (Jobling, J.) September 17, 1949]

[Penang — Crown Suit No. 1 of 1949]

Rules of the Supreme Court, 0.30 r.11 — Discovery of documents against Crown — Crown Suits Ordinance, Ss. 23, 56, 58(a).